

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

Number: **200251001**  
Release Date: 12/20/2002  
UILC: 1313.01-00

CC:ITA:07  
POSTF-146427-02

date: 11/1/02

to: Associate Area Counsel (SB/SE Area 3 - Nashville)

from: Office of the Associate Chief Counsel (Income Tax and Accounting)  
George Baker, Chief, Branch 7

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subject: Definition of "Determination" under I.R.C. §1313(a)(4)

This Chief Counsel Advice responds to your memorandum dated September 26, 2002. Your memorandum requested our opinion as to the definition of "determination" as used in §1313(a)(4) of the Code. In accordance with §6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

Section 1313(a)(4) provides that a determination under §1311 can be in the form of agreement between the Secretary or his delegate and any person, relating to the liability of such person (or the person for whom he or she acts) in respect of a tax under Subtitle A of the 1986 Code for any taxable period. Section 1.1313(a)-4(a)(1) of the Income Tax Regulations states that a determination under §1313(a)(4) is an informal agreement "intended to provide an expeditious method for obtaining an adjustment under section 1311 and for offsetting deficiencies and refunds whenever possible." An agreement made pursuant to §1313(a)(4) "will not, in itself, establish tax liability for the open taxable year to which it relates, but it will state the amount of tax, as then determined, for such open year." Unlike a closing agreement which becomes final upon execution, a determination made pursuant to an agreement under §1313(a)(4) becomes final only when "the tax liability for the open taxable year to which the determination relates becomes final." §1.1313(a)-4(d).

In Benenson v. United States, 257 F. Supp. 101 (S.D. N.Y. 1966), the court (speaking about the mitigation statute) stated that:

[i]n 1954, Congress, mindful of the restrictive scope of the determination requirement, sought to liberalize it by providing one new route through which to obtain a determination. . . . It was enacted in order to allow informal agreements, which could deal at once with both closed and open years, to have the force of "determinations." This determination could be entered into by

the field, thus expediting the arrangement when the parties could agree on the treatment to be accorded both years.

Id. (citing H.R. Rep. No. 83-1337, at 85-86 (1954); S. Rep. No. 83-1662, at 116-117 (1954)).

Form 2259 (Agreement as Determination Pursuant to IRC 1313(a)(4)), has been prescribed for use in executing informal agreements to effect determinations under §1311 and the regulations thereunder.

The “determination,” for purposes of §1313(a)(4), is therefore contained in the agreement on Form 2259, but does not become final as to the “open” year to which it relates until the tax liability for that year becomes final.

Please call (202) 622-4930 if you have any further questions.